

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

**PROPOSED AMENDMENTS TO**

**BAAQMD**

**REGULATION 3, FEES**

**DRAFT STAFF REPORT**

**Prepared by**

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**Reviewed by**

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## EXECUTIVE SUMMARY

The Bay Area Air Quality Management District is continuing the process of realigning permit fees and other District fees on an annual basis as recommended in the Cost Recovery Study prepared by KPMG for the District in 1999. In accordance with the recommendations of this study, most permit related fees were adjusted upward by an average of 15 percent plus the Consumer Price Index (CPI) adjustment for the last two fiscal years. These increases have enabled the District to recover a greater portion of the direct and indirect program costs related to the permitting of sources of air pollution.

This year staff is recommending that all fees be increased by 4.4 percent, which correspond to the increase in the Consumer Price Index (CPI) for the California Bay Area (San Francisco, Oakland and San Jose).

The recommended increases in District fees for fiscal year 2001/2002 are listed below.

### 1. Permit Fee Revisions

- A 4.4% cost of living adjustment in a) the filing fee for New and Modified Sources (Reg. 3-302), b) the banking filing and withdrawal fees (Reg. 3-311), and (c) the fees for alternate compliance plans (Reg. 3-312).
- A 4.4% cost of living adjustment on Fee Schedules B, C, D, E, F, G-1, G-2, G-3, G-4, H, I, K, M, N, and P.

### 2. Asbestos Operations and Aeration of Contaminated Soil

- A 4.4% cost of living adjustment for Schedule L, Asbestos Operations and Schedule Q, Aeration of Contaminated Soil and Removal of Underground Storage Tanks.

### 3. Hearing Board Fees

- A 4.4% cost of living adjustment in the general Hearing Board Fees of Schedule A.

### 4. Summary of Proposed Changes

The proposed changes are expected to increase the District's revenues from permit renewals by an estimated \$500,000 for fiscal year 2001-2002. However, revenues from all permitting activities including: Permit renewals, New and Modified permitting, Title V permitting, and AB2588 fees are expected to be approximately the same as during fiscal year 2000-2001. The primary reason for flat revenue estimate is that fewer major power plant applications are anticipated to be submitted during the next fiscal year.

Specifically, the following general fees and fee schedules of Regulation 3 will be revised.

- Regulation 3, Standards: Sections 302, 311, and 312
- Schedule A, Hearing Board
- Schedule B, Combustion of Fuel
- Schedule C, Stationary Containers for the Storage of Organic Liquids

- Schedule D, Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals
- Schedule E, Solvent Evaporating Sources
- Schedule F, Miscellaneous Sources (including Schedules G-1, G-2 and G-3)
- Schedule H, Semiconductor and Related Operations
- Schedule I, Dry Cleaners
- Schedule K, Solid Waste Disposal Sites
- Schedule L, Asbestos Operations
- Schedule M, Major Stationary Source Fees
- Schedule P, Major Facility Review Fees
- Schedule Q, Aeration of Contaminated Soil and Removal of Underground Storage Tanks

**EFFECTIVE DATE**

The proposed effective date of the amendments above is July 1, 2001, except for amendment to Schedules L and Q, which will be effective July 18, 2001.

**BACKGROUND****GENERAL FEE INCREASE**

For the third year the District is relying on recommendations of the 1999 KPMG Cost Recovery Study in order to align District fee revenues more closely with the costs of the related programs. In the past the District often skipped adjusting the fee schedules to account for inflation. This practice, in part, caused District fee revenues to fall well below the actual program costs and also contributed to the depletion of the District's reserve accounts. In keeping with the recommendations of the KPMG Cost Recovery Study the District is proposing this CPI adjustment of all District fees. The fee increase proposal for fiscal year 2001/2002 should bring fees into alignment with related permit services costs accounting for the overall inflation that has occurred over the last twelve years.

The District's permit program activities eligible for revenue source are estimated at \$16.9 million for the 2001/2002 fiscal year. Incorporating the proposed fee increase, the District's projected permit fee revenue for the coming year is \$15.6 million. Accurate projection of permit revenues is very difficult since many factors including, the local economy, the effects of the energy crisis issues, and normal fluctuations in major plant activities. Furthermore this analysis of projected direct cost versus projected revenues, does not consider all the indirect costs of all District programs, which are estimated at approximately 40 percent.

**FUTURE RECOMMENDATIONS**

In order to keep District permit fee revenues from falling below the cost of carrying out

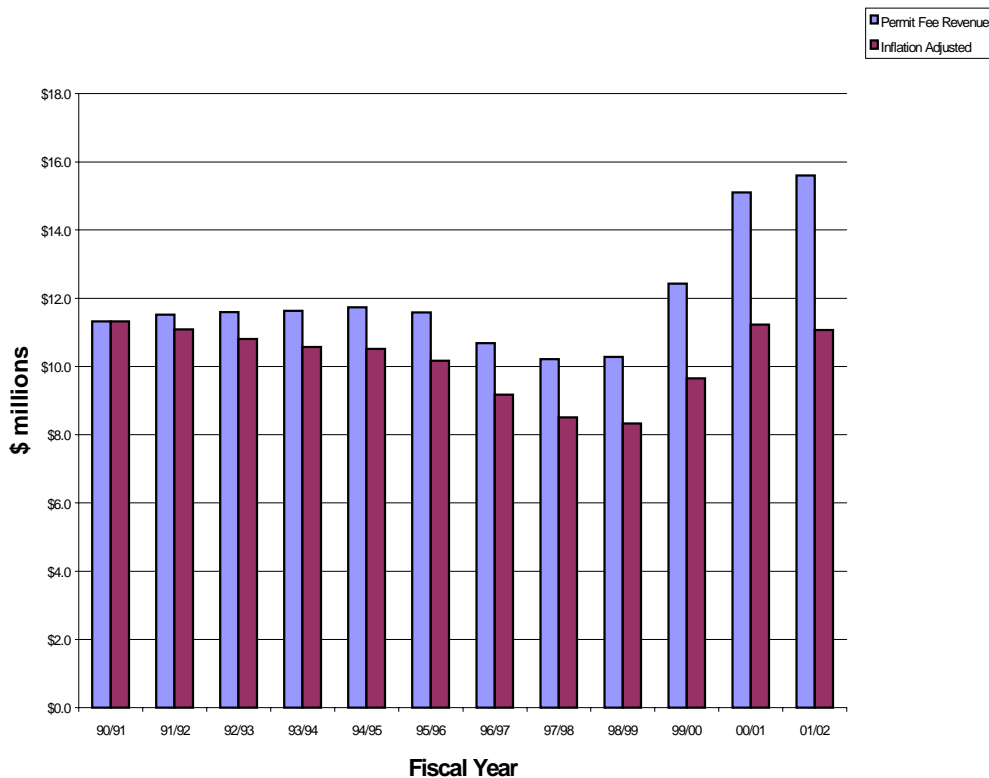
the District's permit related programs in keeping with the recommendations of the KPMG "Cost Recovery Study", the District has instituted the following long-term measures:

- Permit fees will be reviewed annually and adjusted every year, as necessary to account for inflation.
- The District will continue the recently instituted time accounting program, in order to accurately track all employee time charges against specific programs and to use this data in the future to align District fee schedule, as closely as possible, so that fee revenues will cover the cost of related program activities.

#### STATUTORY AUTHORITY FOR PROPOSED PERMIT FEE INCREASE

Health & Safety Code Section 41512.7 establishes a statutory cap on the allowable

**Permit Fee Revenue vs. Inflation**



annual percentage increase in permit fees and therefore limits the statutory authority for actual cost recovery for permit-related activities set forth in Health & Safety Code Section 42311. The 15 percent cap on annual percentage increase for authority-to-construct permits or permits to operate in subdivision (b) of Section 41512.7 impacts a local air pollution control district's ability to recover its actual costs as authorized in Section 42311, subdivision (a). This statutory limitation on the recovery of the costs of an air pollution control permit program is especially striking when an air pollution control district discovers that the difference between current permit fee revenues and the actual cost of such permit programs is greater than 15 percent. In practice, the 15 percent annual increase limitation circumscribes existing statutory authority for a local air

pollution control district to recover its “actual costs for district programs for the immediately preceding fiscal year” as set forth in Health & Safety Code Section 42311.

It is also clear from the plain meaning of the language in Section 41512.7 that the 15 percent cap is not related to the increase, if any, in the Consumer Price Index as it relates to permit fee increases. The limiting language in Health & Safety Code § 42311(a) already controls permit fee increases that are linked to increases in the Consumer Price Index. Section 42311(a) states that any “adjustment [to the permit fee schedule] not [be] greater than the change in the annual California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding year.”

In conclusion, Health & Safety Code § 41512.7 limits actual cost recovery pursuant to Health & Safety Code § 42311.

## OVERVIEW OF RULE CHANGES

The complete text of the proposed changes to District Regulation 3, Fees, is included in the appendix to this document. The proposed amendments to the regulation and each fee schedule are summarized below:

### REGULATION 3—STANDARDS

- Section 3-302: Increase the filing fee for permit applications from \$228 per source to \$238 per source.
- Section 3-311: Increase banking fees from \$228 per source or withdrawal to \$238 per source or withdrawal.
- Section 3-312: Increase fees for emission caps and alternate compliance plans from \$575 per source to \$600 per source, and raise the maximum fee from \$5750 to \$6000.

### REGULATION 3—FEE SCHEDULES

- A 4.4% cost of living adjustment on all Fee Schedules B, C, D, E, F, G-1, G-2, G-3, G-4, H, I, K, L, M, P and Q.
- Schedule N: Increase the variable  $F_T$  (total amount of fees to be collected) by 4.4 percent due to cost of living increases. This change does not require any modifications to the language of Schedule N.

## RULE DEVELOPMENT PROCESS

The proposed revisions to Regulation 3, Fees were discussed during a Public Workshop held at the District’s office on March 28, 2001. Only four members of the regulated community attended this workshop, three representing companies and one representing an industrial association. A second Public Workshop was held at the District’s office on April 25, 2001, to address the proposed amendments to Schedule L, Asbestos Operations, since there was concern that insufficient noticing was given to asbestos demolition industry. No one showed up for this workshop. No written public comments were

received by the District as a result of the workshop notices or as a result of issues discussed at the first workshop.

## **ASSOCIATED IMPACTS**

### **EMISSIONS IMPACTS**

There will be no direct emission increases or decreases as a result of these proposed amendments.

### **ECONOMIC IMPACTS**

Health & Safety Code § 42311, subdivision (a) provides that an air pollution control district may recover, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources. In addition, a district may adopt, by regulation, a schedule of fees to be assessed on area-wide or indirect sources of emissions which are regulated, but for which permits are not issued -- to recover the costs of district programs related to these sources. Health & Safety Code § 42311(g).

Based on this statutory authority, the District can recover its administrative and regulatory costs for programs related to stationary, area-wide and indirect sources under its jurisdiction. Therefore, the proposed amendments to Regulation 3 - Fees, by definition, are not expected to cause or create any adverse economic impacts. The fees merely represent cost recovery for important regulatory services. Finally, the proposed amended fee regulation will enable the District to continue to provide a consistent high level of service to the affected permit holders and fee payers.

Impact on small businesses is expected to be insignificant. Most small business only operate one or two sources which generally only pay the minimum permit renewal fee. The annual permit fee for each of these sources is currently \$115; under the proposal, this fee will be raised to \$120 per source.

The proposal is anticipated to maintain District revenues at or near the same level as last fiscal year.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., and the CEQA Guidelines, 14 CCR 15000 et seq., require a government agency, such as the BAAQMD, that undertakes or approves a discretionary project to prepare documentation addressing the potential impacts of that project on all environmental media. If an agency's approval action on a project is considered exempt, CEQA does not apply. The District's proposed fee increase is statutorily exempt from the requirements of the California Environmental Quality Act as stated in the CEQA Guidelines Section 15273: "CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies....." *See also* Public Resources Code Section 21800(b)(8).

**CALIFORNIA HEALTH AND SAFETY CODE**

Section 40728.5 of the Health and Safety Code requires districts to assess the socioeconomic impacts of amendments to regulations that, "...will significantly affect air quality or emissions limitations." This regulatory proposal has direct costs associated with the increase in permit fees, however, does not fall within the scope of an amendment that significantly affects air quality or emissions limitations. This section, therefore, does not apply.

Under Health and Safety Code Section 40920.6, the District is required to perform an incremental cost analysis for a proposed rule. This analysis is required, "Prior to adopting rules or regulations for best available retrofit control technology pursuant to Sections 40918, 40919, 40920, and 40920.5, or for a feasible measure pursuant to Section 40914...." The purpose of this section is to identify increments of technology that meet the emission reduction objectives of the proposed rule, where possible, and to calculate the cost-effectiveness of each increment. As this proposal does change regulatory standards or impose additional emission limitations, this section is not applicable.

Section 40727.2 of the Health and Safety Code imposes new requirements on the adoption, amendment, or repeal of air district regulations. It requires a district to identify existing federal and district air pollution control requirements for the equipment or source type affected by the proposed change in district rules. The district must then note any differences between these existing requirements and the requirements imposed by the proposed change. This fee proposal does not impose a new standard, make an existing standard more stringent, or impose new or more stringent administrative requirements. Therefore, Section 40727.2 does not apply.

Pursuant to Health and Safety Code, Section 40727, regulatory amendments must meet findings of necessity, authority, clarity, consistency, non-duplication, and reference. The proposed amendments to Regulation are:

- Necessary to fund the District's efforts to attain federal and state air quality standards;
- Authorized by Health and Safety Code Sections 42311, 42311.2, 41512.7, 42364 and 40 CFR Part 70.9;
- Clear, in that the amendments are written so that the meaning can be understood by the affected parties;
- Consistent with other District rules, and not in conflict with any state or federal law;
- Not duplicative of other statutes, rules or regulation; and
- Implements and references Health and Safety Code Sections 42311, 42311.2, 41512.7, 42364 and 40 CFR Part 70.9.

The proposed amendments have met all legal noticing requirements and have been discussed with interested parties. Staff recommends adoption of the proposed amendments.